STATE OF MICHIGAN

COURT OF APPEALS

MUSTAPHA MARWANI, Plaintiff-Appellant,	UNPUBLISHED January 28, 2014
v	No. 310126 Wayne Circuit Court
CHALMERS SERVICE STATION, INC., Defendant-Appellee.	LC No. 10-004627-NO

Before: JANSEN, P.J., and CAVANAGH and MARKEY, JJ.

PER CURIAM.

In this premises-liability action, plaintiff appeals by right the circuit court's order of August 28, 2013, dismissing his claims with prejudice pursuant to MCR 2.114.[1] We affirm.

Plaintiff's complaint alleged that he was lawfully on defendant's premises as a business invitee on February 24, 2010, and entered "what used to be the service station of the gas station." Plaintiff alleged that he slipped on oil and fell into an open pit, where oil changes were previously performed. In the complaint, plaintiff referred to himself as defendant's employee at the time of the injury. Plaintiff also stated in his answers to interrogatories that defendant was his employer, who had asked him to go inside the building to retrieve salt for melting exterior ice. Plaintiff later admitted at his deposition that he provided false answers to the interrogatories

[1] On April 18, 2012, the circuit court entered an order granting defendant's motion for summary disposition but failed to specify any basis for its order. Plaintiff claimed an appeal from that order; briefs were submitted and oral argument was held before this Court. On our own initiative, we remanded the matter for clarification, directing the circuit court to set forth its specific reasons for granting summary disposition in favor of defendant. *Marwani v Chalmers Service Station, Inc*, unpublished order of the Court of Appeals, entered June 27, 2013 (Docket No. 310126). On August 28, 2013, the circuit court vacated its earlier order granting summary disposition and entered a new order explaining that the matter had been dismissed as a sanction under MCR 2.114. We ordered supplemental briefing on the issue whether the circuit court properly dismissed the case under MCR 2.114. *Marwani v Chalmers Service Station, Inc*, unpublished order of the Court of Appeals, entered September 11, 2013 (Docket No. 310126).

in an effort to expedite his recovery. In particular, he admitted that he was not defendant's employee and that no oil was involved.

Bilal Taher, a shareholder of defendant and the owner of a store on the premises, testified that plaintiff had approached him outside as he was putting bottles in the former service station. According to Taher, plaintiff inquired about employment. Taher told plaintiff to wait while he washed his hands and agreed that plaintiff could wait inside the building. When Taher returned, plaintiff was outside and said that he had fallen in the "pit."

Defendant moved for summary disposition, arguing that it owed no duty to warn plaintiff of the pit because of its open and obvious nature. Defendant also argued that because of plaintiff's admitted lies in his complaint and discovery responses, plaintiff's claim was barred by the wrongful-conduct rule and clean-hands doctrine. The circuit court granted defendant's motion for summary disposition in an order dated April 18, 2012. But rather than predicating its order on the absence of a genuine issue of material fact, it appears that the circuit court granted summary disposition as a sanction for plaintiff's deceitful conduct. Indeed, the circuit court remarked that although there remained a genuine issue of material fact concerning whether the pit was open and obvious, plaintiff's false statements and false answers to the interrogatories were "an affront to the entire system."

Plaintiff appealed the circuit court's order granting summary disposition, and oral argument was held before this Court. Observing that the circuit court had not identified a proper basis for its decision to grant summary disposition, we remanded the matter for clarification and directed the circuit court to set forth its specific reasons for granting summary disposition in favor of defendant. *Marwani v Chalmers Service Station, Inc*, unpublished order of the Court of Appeals, entered June 27, 2013 (Docket No. 310126). On August 28, 2013, the circuit court vacated its earlier grant of summary disposition for defendant, and entered a new order explaining that the matter had been dismissed as a sanction under MCR 2.114.[2] The circuit court observed that plaintiff had made misleading statements and had been untruthful in his responses to several interrogatories; the court set forth plaintiff's misleading statements in detail. The circuit court noted that plaintiff had personally signed the untruthful responses and had also signed a deceptive application for workers' compensation benefits. The court characterized plaintiff's misrepresentations as "deliberate falsehoods perpetrated for economic gain" and

[2] Indeed, the circuit court erred to the extent that it originally granted defendant's motion for summary disposition as a sanction for plaintiff's deceitful conduct. See *Brenner v Kolk*, 226 Mich App 149, 155; 573 NW2d 65 (1997). "MCR 2.116 is not a rule of sanction." *Id*. Nor did the clean-hands doctrine or wrongful-conduct rule provide a basis for the circuit court's original grant of summary disposition for defendant. The clean-hands doctrine is relevant only in equitable actions. *Rose v Nat'l Auction Group*, 466 Mich 453, 467-468; 646 NW2d 455 (2002). Plaintiff did not seek equitable relief in this case. Further, "the wrongful-conduct rule only applies if a plaintiff's wrongful conduct is a proximate cause of his injuries." *Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 417; 726 NW2d 73 (2006). Here, plaintiff's deceitful actions had no causal connection to his injuries.

concluded that "such an egregious act of deliberate falsehood requires the severest sanction." Citing MCR 2.114(E), the court dismissed plaintiff's case in its entirety, noting that "dismissal [i]s the only appropriate response; to do otherwise would be an affront to our collective sense of justice and fair dealing. No court should have to countenance this deceit."

We now consider plaintiff's argument that the circuit court erred by dismissing his claims with prejudice under MCR 2.114(E) as a sanction for his deceitful conduct. We conclude that dismissal with prejudice was an appropriate remedy on the specific facts of this case.

A party must sign each document filed in the action. MCR 2.114(C)(1). The party's signature "constitutes a certification" that, among other things, "the document is well grounded in fact," "is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law," and "is not interposed for any improper purpose . . . ." MCR 2.114(D)(2) and (3). MCR 2.114(E) provides:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, *an appropriate sanction*, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages. [Emphasis added.]

Given the overwhelming evidence of plaintiff's numerous, willful misrepresentations—including plaintiff's own admissions—the circuit court did not clearly err by determining that plaintiff's complaint and interrogatory responses were not well-grounded in fact and were signed in violation of MCR 2.114(D). See *Contel Sys Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). Once the circuit court had determined that these documents were signed in violation of MCR 2.114(D), the imposition of sanctions under MCR 2.114(E) became mandatory. *Guerrero v Smith*, 280 Mich App 647, 678; 761 NW2d 723 (2008).

The central question, of course, is whether the dismissal of plaintiff's claims with prejudice was "an appropriate sanction" within the meaning of MCR 2.114(E). We conclude that it was. It is true that the text of MCR 2.114(E) is written primarily in terms of monetary sanctions. At the same time, however, MCR 2.114(E) clearly states that the circuit court may impose any "appropriate sanction," which "*may* include an order to pay to the other party or parties the amount of the reasonable expenses incurred . . . ." (Emphasis added.) As this Court has explained, "MCR 2.114(E) does not restrict the sanction to expenses or costs incurred. Rather, it gives the . . . court discretion to fashion another appropriate sanction." *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 726; 591 NW2d 676 (1998). In other words, an "appropriate sanction" under MCR 2.114(E) may or may not include an order requiring the payment of expenses or costs, and the determination of an appropriate sanction is a matter within the circuit court's discretion. *Id*. at 726-727.

In light of plaintiff's egregious behavior in this case, including numerous intentional misrepresentations in his pleadings and interrogatory responses, the circuit court determined that the only appropriate sanction was dismissal with prejudice. As the circuit court observed in its order of August 28, 2013, plaintiff's misrepresentations were not the product of "mistake,

misunderstanding, inadvertence, or negligent failure to investigate." Instead, plaintiff's repeated misrepresentations were the product of willful deceit, and the court determined that any sanction less than dismissal with prejudice would not be adequate to deter plaintiff's conduct. See *id*. at 719 (noting that the purpose of sanctions under MCR 2.114 is "to deter attorneys and parties" from submitting documents that are not well-grounded in fact and advancing frivolous legal claims). We agree that any lesser sanction would have failed to deter plaintiff's widespread misconduct and would have unnecessarily prolonged the litigation. The circuit court did not clearly err by imposing sanctions under MCR 2.114(E), *Guerrero*, 280 Mich App at 677, and did not abuse its discretion by determining that dismissal was an appropriate sanction, see *FMB-First Mich*, 232 Mich App at 726-727.[3]

We note that the circuit court was also authorized to dismiss plaintiff's claims pursuant to its inherent power to sanction litigants for deceitful conduct. The circuit court "possess[es] the inherent authority to sanction litigants and their counsel, including the power to dismiss an action," and the exercise of such authority is reviewed for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388-389; 719 NW2d 809 (2006). "'The authority is rooted in a court's fundamental interest in protecting its own integrity and that of the judicial process.'" *Id*. at 389 (citation omitted); see also *Brenner v Kolk*, 226 Mich App 149, 160; 573 NW2d 65 (1997).

We acknowledge that "[d]ismissal is a drastic step that should be taken cautiously" and that the "court is required to carefully evaluate all available options" before dismissing a case. *Id*. at 163. However, the record in this case reveals precisely the type of egregious, deceitful conduct that warrants such an extreme measure. See *id*. As noted previously, the circuit court carefully detailed each instance of plaintiff's misconduct and ultimately determined that any sanction less than dismissal would be inadequate to address the severity of plaintiff's behavior. On the specific facts of this case, we perceive no abuse of discretion in the circuit court's decision to sanction plaintiff by dismissing his claims with prejudice. See *Maldonado*, 476 Mich at 388.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Jane E. Markey

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[3] In *Jimenez v Madison Area Tech College*, 321 F3d 652, 656-657 (CA 7, 2003), the United States Court of Appeals for the Seventh Circuit upheld the sanction of dismissal under Federal Rule of Civil Procedure 11 to deter behavior similar to plaintiff's conduct in the present case. In that case, the plaintiff engaged in deceptive conduct by falsifying certain documents to bolster her fraudulent claims in the district court. *Jimenez*, 321 F3d at 656. The *Jimenez* court explained that, although the sanction of dismissal is harsh, it was necessary to deter the plaintiff's willfully deceptive conduct. *Id*. at 657. This Court has previously looked to federal caselaw analyzing Rule 11 when interpreting the provisions of MCR 2.114. See *Lloyd v Avadenka*, 158 Mich App 623, 630; 405 NW2d 141 (1987).